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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

In re:) Case No: 10-44437-LJT
OSWALDO P. CRUZ,) DC No. AEM- 2
Debtor(s),) CHAPTER 13

ONEWEST BANK, FSB,) DECLARATION OF BRIAN BURNETT
Movant,) IN SUPPORT OF MOTION FOR
v.) RELIEF FROM AUTOMATIC STAY
OSWALDO P. CRUZ, Debtor; FLORENDA C.) AND FROM THE CO-DEBTOR STAY
CRUZ, Co-Debtor; MARTHA G. BRONITSKY,)
Chapter 13 Trustee;)
Respondents.)

Date: August 6, 2010
Time: 11:00 a.m.
Ctrm: 201

DECLARATION OF BRIAN BURNETT

I, BRIAN BURNETT, declare and say as follows:

1. I am over eighteen (18) years of age and a citizen of the United States of America. I make this Declaration based upon the facts, all of which are within my personal knowledge. If called upon as a witness, I could and would competently testify thereto.

2. I am employed as an Assistant Vice President by OneWest Bank, FSB ("Movant"). I have access to and have reviewed Movant's business records as they relate to the subject Note and Deed of Trust referenced below and I am familiar with the manner in which those records are compiled. I make this Declaration based upon the following facts, all of which are within my personal knowledge. If called as a witness I could and would competently testify thereto.

1 Florenda C. Cruz made, executed and delivered a Promissory Note (“Note”) dated December 7,
2 2005, in the original principal sum of \$359,920.00 (the “Note”). The Note is secured by a duly
3 perfected Deed of Trust of even date over that real property located at 7716 W Mesa Verde Lane,
4 Las Vegas, NV 89113 (the “Subject Property”). The Subject Property is legally described in the
5 Deed of Trust. A true and correct copy of the Note and Deed of Trust are attached hereto as
6 Exhibits “A” and “B” respectively and incorporated herein by reference.

7 4. The Note and Deed of Trust were subsequently assigned to Movant. A true
8 and correct copy of the Assignment is attached hereto as Exhibit “C” and incorporated herein by
9 reference.

10 5. Pursuant to the terms and conditions of the Note and Deed of Trust, the
11 Debtor and Co-Debtor are obligated to make monthly payments on the first day of each month.

12 6. On or about May 1, 2009, a default occurred under the terms and conditions
13 of the Note and Deed of Trust in that the Debtors failed to make the contractual payment then due.
14 No post-petition payments have been made by the Debtor. Debtors are in default on three post-
15 payments (May 2010 through July 2010), totaling \$5,811.20. The amount of the current monthly
16 installment payment is \$1,874.58.

17 7. A post-petition account statement is attached hereto and marked as Exhibit
18 “D” and incorporated herein by reference.

19 8. As of July 7, 2010, the following was due under the subject loan:

| | |
|-------------------|---------------------|
| Principal Balance | \$359,920.00 |
| Interest Due | \$28,488.48 |
| Late Charges | \$1,124.76 |
| Total Costs | \$8,297.00 |
| Total Due | \$397,830.24 |

25 A true and correct copy of a payoff screenprint generated by OWB is attached hereto as Exhibit “E”
26 and incorporated herein by reference.

27 9. According to Debtor’s Schedule A filed with the Court, the fair market value
28 of the Subject Property is \$342,000.00. A true and correct copy of Debtor’s Schedule A is attached

hereto as Exhibit "F" and incorporated herein by this reference.

10. The total due to Movant under the Subject Note and Deed of Trust is \$397,830.24.

11. A Notice of Default has recorded on August 19, 2009.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 13th day of July, 2010 at Austin, Texas.

/s/Brian Burnett
BRIAN BURNETT
Assistant Vice President, OneWest Bank, FSB